

ESTTA Tracking number: **ESTTA560232**Filing date: **09/18/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Wimo Labs LLC
Granted to Date of previous extension	09/18/2013
Address	939 West Lake Street Chicago, IL 60607 UNITED STATES
Attorney information	Mike R. Turner Neal, Gerber & Eisenberg LLP 2 North LaSalle Street, Suite 1700 Chicago, IL 60602 UNITED STATES mturner@ngelaw.com, temmanuelson@ngelaw.com, trademarks@ngelaw.com Phone:312.269.8000

Applicant Information

Application No	85809215	Publication date	05/21/2013
Opposition Filing Date	09/18/2013	Opposition Period Ends	09/18/2013
Applicant	RJAP Enterprises LLC 230 South "A" Street Tustin, CA 927803627 UNITED STATES		

Goods/Services Affected by OppositionClass 009. First Use: 2012/12/14 First Use In Commerce: 2012/12/14
All goods and services in the class are opposed, namely: Cell phone cases**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4262488	Application Date	12/21/2011
Registration Date	12/18/2012	Foreign Priority Date	NONE
Word Mark	TAKTIK		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 009. First use: First Use: 2012/06/21 First Use In Commerce: 2012/06/21 mobile phone cases

Attachments	Notice_of_Opposition_-_TACTICALL.pdf(20973 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Mike R. Turner/
Name	Mike R. Turner
Date	09/18/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:
Application Serial No. 85/809,215
Published in the *Official Gazette*
May 21, 2013

WIMO LABS, LLC (d/b/a LUNATIK),)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
RJAP ENTERPRISES, LLC,)	
)	Mark: TACTICALL
Applicant.)	

NOTICE OF OPPOSITION

Opposer, Wimo Labs, LLC, doing business as Lunatik (“Lunatik”), a limited liability corporation organized and existing under the laws of the State of Illinois, with offices at 939 West Lake Street, Chicago, Illinois 60607, believes that it will be damaged by registration of the mark “TACTICALL” in International Class 9, as shown in Application Serial No. 85/809,215 filed by RJAP Enterprises, LLC, an entity listing an address in Tustin, California (“Applicant”), and hereby opposes the same and requests that registration be refused.

As grounds for its opposition, Lunatik alleges that:

1. Applicant seeks to register a mark that consists of the term TACTICALL in standard character form for use in International Class 9 in connection with cell phone cases (“the Subject Mark” or “the Subject Application”).
2. The Subject Application was filed under 15 U.S.C. § 1051(1)(a), claiming under threat of perjury that Applicant first used the TACTICALL mark in interstate commerce in association with the sale of cell phone cases on December 14, 2012.

3. Applicant filed a specimen with the Subject Application on December 21, 2012, but the specimen fails to show use of the Subject Mark with the designated goods. Accordingly, the specimen is defective, and should have been rejected.

4. Lunatik has obtained the necessary extensions of time in which to file this Notice of Opposition. Accordingly, this Notice of Opposition is being timely submitted.

5. Lunatik is an innovative consumer products company associated with the award winning and world renowned design firm, Minimal, Inc. Launched in 2010, Lunatik began as an attempt by several product designers at Minimal (also known as MNML) to design and sell their own products instead of designing products for other entities. The first product, launched under the LUNATIK mark, was a watch kit used in association with the iPod Nano. With a goal of raising \$15,000 on Kickstarter, the watch kit product raised over a million dollars in less than a month, and a new brand was born.

6. Since that time, Lunatik has diligently worked to expand its product line. Among other things, it offers a variety of cell phone cases, which can be seen and purchased through its website, www.lunatik.com. These phone cases are also sold throughout the world through authorized distributors, and via brick and mortar retailers.

7. One of Lunatik's most popular lines of cell phone cases is sold under its TAKTIK mark. Lunatik adopted the TAKTIK mark as a means to highlight the rugged, durable design of the cell phone cases it sells under that mark. The mark conjures images of military, tactical use, and the phone case is intended to serve as the "tactical armor" for the phone it protects. Lunatik has sold many thousands of TAKTIK brand cell phone cases throughout the United States and around the world. Indeed, it is one of the more popular iPhone 5 cases on the market today.

8. In order to protect its increasingly valuable TAKTIK brand, Lunatik has procured a number of foreign and domestic trademark registrations covering its TAKTIK mark. This

includes U.S. Reg. No. 4,262,488, for use with “mobile phone cases” in International Class 9 (“the ‘488 Registration”). Lunatik filed the ‘488 Registration as an intent-to-use application on December 21, 2011, exactly one year prior to Applicant’s filing of the Subject Application. The registration issued approximately one year later, on December 18, 2012. Lunatik was using its TAKTIK mark in association with the sale of cell phone cases at least as early as June 21, 2012, and well prior to the claimed December 14, 2012 date of Applicant. Furthermore, Lunatik used the TAKTIK mark with other class 9 goods well prior to June 21, 2012.

9. The ‘488 Registration is *prima facie* evidence of Lunatik’s exclusive right to use TAKTIK in association with the sale of mobile phone cases in interstate commerce within the United States.

10. Lunatik’s phone cases offered in association with its TAKTIK mark are advertised and promoted throughout the United States. Lunatik’s extensive advertising and promotion of its various goods and services under its TAKTIK mark features the use of Internet advertising, magazine advertising, point of purchase and in-store advertising. In addition, Lunatik advertises its phone cases at various conventions, including the annual Consumer Electronics Show in Las Vegas.

11. As a result of Lunatik’s use of and rapid success with its TAKTIK mark, the mark has developed exceedingly valuable goodwill, and has become a vital asset to Lunatik.

12. Despite Lunatik’s prior rights in its TAKTIK mark and its use of the mark in association with the exact type of goods Applicant purports to offer, Applicant filed the Subject Application to register the almost phonetically equivalent TACTICALL mark.

13. Based on the marketplace success of Lunatik’s TAKTIK brand at that time of Applicant’s filing, Lunatik believes that Applicant selected the name TACTICALL and the idea of a military-themed phone case in order to improperly borrow off of Lunatik’s good will.

14. Applicant's advertising and intended use of the term TACTICALL in association with cell phone cases will inevitably reach the same consumers that Lunatik targets with its use of its TAKTIK mark.

15. At least because of (1) the very high phonetic similarity of the marks, (2) the equivalent connotation of the marks, and (3) the common use with cell phone cases, consumers, upon seeing the term TACTICALL used in connection with cell phone cases, are likely to mistakenly believe that those goods originated with or are connected with, sponsored by, associated with, or are licensed or approved by Lunatik. Thus, the registration and use by Applicant of the TACTICALL mark in connection with the recited goods is likely to cause confusion, mistake, or deception in violation of 15 U.S.C. § 1052(d).

16. If a registration is issued to Applicant for the TACTICALL mark, the confusion with Lunatik's TAKTIK mark would result in damage and injury to Lunatik and the public. Registration of the Subject Mark would give Applicant an unqualified right to wrongfully appropriate Lunatik's valuable goodwill and reputation associated with the TAKTIK mark; to benefit from the likely confusion among purchasers who will be led to believe that Applicant's services are related in some fashion to Lunatik; to harm Lunatik's goodwill and reputation associated with its TAKTIK mark; and to restrict the natural growth of Lunatik's TAKTIK mark.

WHEREFORE, Lunatik requests that this Opposition be sustained and Application Serial No. 85/809,215 be refused registration.

Please charge the fee of \$300 and any additional fees related to this matter to Deposit Account No. 502261.

Respectfully submitted,
WIMO LABS, LLC

Date: September 18, 2013

By: /Mike R. Turner /
One of its Attorneys

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CERTIFICATE OF TRANSMISSION

I, Theresa C. Emanuelson, hereby certify that the foregoing *Notice of Opposition* is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at <http://estta.uspto.gov/> on the date noted below:

Date: September 18, 2013

By: /Theresa C. Emanuelson/

NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street, Suite 1700
Chicago, Illinois 60602-3801
(312) 269-8000

CERTIFICATE OF SERVICE

I, Mike R. Turner, state that I deposited a copy of the foregoing *Notice of Opposition* into a First Class Mail receptacle, addressed to:

RJAP Enterprises LLC
230 South "A" Street
Tustin, California 92780-3627

that being the correspondence address of record for Application Serial No. 85/809,215 as listed with the USPTO, in accordance with Trademark Rule §§ 2.201 and 2.119 on this 18th day of September, 2013.

/Mike R. Turner/